

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3585 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

SHAIFI ALIAS PAPPU IBRAHIM KHOKHAR

Versus

STATE OF GUJARAT

Appearance:

Mr. R.M.Chhaya for NANAVATY ADVOCATES for Petitioner
Mr. Nigam Shukla, learned Asst.G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 05/11/96

ORAL JUDGMENT :

1. This Special Civil Application is directed against the order dated 27-4-96 passed by the District Magistrate, Bharuch whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 30-4-96 and since then the petitioner is under detention

lodged at Central Jail, Rajkot.

2. The present Special Civil Application was filed in this court on 9-5-96 and on 10-5-96 Rule returnable on 23-7-96 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit of the detaining authority has been filed.

3. The grounds enclosed with the detention order show that 5 criminal cases were registered against the petitioner at Hansot Police Station for various offences under IPC including the offences under Chapter 16 and 17. After taking notice of the allegations of these 5 criminal cases, the detaining authority has also taken into consideration the statements made by 5 witnesses against the petitioner's criminal activities. The detaining authority has recorded that the petitioner is a head strong person and has been moving openly with deadly weapons, creating the atmosphere of terror and fear, has also been giving public beating to the witnesses and it was necessary to detain the petitioner to prevent him from continuing with his anti social activities. Privilege under S.9(2) of the Act has also been claimed because the witnesses requested to withhold their identity for reasons of security. Accordingly the detention order was passed.

4. The detention order is challenged on more than one grounds but the learned counsel for the petitioner at the time of arguments has laid stress only on the ground that allegations and materials, which have been relied upon by the detaining authority against the petitioner, even if taken to be true, do not constitute a case of breach of public order and at the most it can be said to be a case of breach of law and order. He has also placed reliance on 1995(2) GLR 1268 (M.J. Shaikh v. M.M. Mehta, C.P.).

5. I have considered the submissions and find that the law laid down by the Supreme Court in M.J.Shaikh's case (Supra) applies with full force in the facts of this case. The offences, which have been registered against the petitioner, are offences against individuals and it can not be said that a case of breach of public order has been made out. It is clear that the detention order is passed on grounds, which are relevant only for the purpose of breach of law and order. The detention order, therefore, can not be sustained.

6. Accordingly the Special Civil Application is allowed and the impugned detention order dated 27-4-96

passed by the District Magistrate, Bharuch is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.